



oldier stands guard in front of the International Media Center for the U.S.-North Korean summit in Hanoi, Vietnam, Feb. 25, 2019.

Image Credit: AP Photo/Vincent Yu

How to Handle Sanctions Relief With North Korea

When Donald Trump meets Kim Jong Un in Vietnam should he give North Korea what it wants – sanctions relief?

By Troy Stangarone
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For months now, North Korea has been pushing for sanctions relief as the price of dismantling its nuclear weapons program. In his New Year Address, leader Kim Jong Un said that if the United States “persists in imposing sanctions and pressure” North Korea would find a new way of defending itself, while the *Rodong Sinmun* reinforced Kim’s point, saying that “improvement in [U.S.-North Korea] relations and sanctions cannot go side by side.”

In Hanoi, Trump could offer North Korea humanitarian aid, a declaration marking the end of the Korean War, the establishment of liaison offices, or other benefits outside of sanctions relief as the “corresponding steps” that Kim has said are necessary for further steps toward denuclearization. However, whether in Vietnam or during a later summit, the United States will eventually need to determine how to unravel the sanctions that have been put in place over the years if North Korea takes real steps toward dismantling its programs.

From a practical standpoint, once North Korea has made firm commitments on dismantling its programs and taken verifiable steps to fulfill those commitments, sanctions relief may be the only practical way forward. Sig Hecker and his colleagues at Stanford have noted it could take up to 15 years to dismantle North Korea’s nuclear programs. At a talk in Washington D.C. last year, David Albright noted that dismantling North Korea’s high-enriched uranium (HEU) program alone will likely take 19-30 months. It is unlikely that North Korea will be willing to wait nearly two years or more for any benefits while its facilities are being inspected and dismantled. So the real question is how to build sanctions relief in a way that minimizes the loss of leverage, weakens the current sanctions regime as little as possible, incentivizes the process to move forward, and is proportional to North Korean actions.

In his recent remarks at Stanford, U.S. Special Representative for North Korea Stephen Biegun suggested that while sanctions will not be removed until North Korea’s nuclear weapons are dismantled that the Trump administration is prepared to “simultaneously and in parallel” work with North Korea to fulfill the commitments made in Singapore.

Why the U.S. Should Maintain Sanctions

Biegun said in his remarks at Stanford that he had a vision where the last nuclear weapon left North Korea, the peace treaty was signed, the embassies opened, and sanctions were lifted at the same time. That is not the wrong way to think about finishing the removal of sanctions on North Korea. Sanctions should remain in place until the end, but that does not mean that there cannot be flexibility.

Lifting sanctions in response for dismantlement steps would clearly be North Korea's preferred path to sanctions relief. While removing the export bans on items such as wood, textiles, and seafood might be justifiable, as they were sanctioned as part of an efforts to apply economic pressure to convince North Korea to return to talks over its weapons programs, it would also mean losing leverage to ensure that the process goes forward. Rather than being an issue of whether Kim Jong Un (or from his perspective the United States) can be trusted, the process should move forward with the sense on both sides that there are no steps that cannot be rolled back until everything is concluded. North Korea will want to minimize the irreversibility of any of its steps until the end, and the United States should as well.

Additionally, if the process were to stall, there will need to be a means to restore pressure. In the absence of a clear provocation by North Korea, it would be unlikely that the United States would be able to get sanctions restored if they had been removed rather than suspended. In fact, Biegun's remarks suggests that the Trump administration understands that removing sanctions without a means to restore them would run the risk of reaching an equilibrium point where North Korea is comfortable with the level of sanctions relief and decides that partial relief and maintaining most of its weapons programs is a better option than giving up its programs and eventually reaching full sanctions relief. The United States will need options if the process stalls.

To avoid reaching that equilibrium point, there are essentially three ways that the Trump administration could proceed in providing sanctions relief without lifting sanctions – waive U.S. bilateral sanctions, create an exception to UN sanctions through the 1718 Committee, or provide a temporary waiver for UN sanctions.

The U.S. Bilateral Sanctions Option

In exchange for certain steps by North Korea, the Trump administration could waive one or more of the U.S. sanctions on North Korea. Most economic activity between the United States and North Korea is prohibited as U.S. sanctions are tied to North Korea's human rights violations, illegal drug trade, nuclear and missile programs, and its illicit financial and economic activities.

Trade between the United States and North Korea is limited to food aid and other forms of humanitarian assistance. New U.S. investments in North Korea are prohibited. U.S. officials at international financial institutions (IFIs) are required to oppose efforts to provide financial aid to North Korea. Travel between the two countries is heavily restricted as the United States requires the issuance of a special passport for Americans to travel to North Korea and North Koreans are restricted to New York City.

The UN Exemption Route and Inter-Korean Cooperation

Perhaps the simplest step for the Trump administration would be to work through the UN's 1718 Committee to provide exemptions for specific economic projects. As Biegun noted in his remarks, the United States has worked in the 1718 Committee to help alleviate a series of backlogged requests for humanitarian assistance, which have been given a six-month exemption. It has also been supportive of prior exemptions for inter-Korean sports diplomacy, family reunions, and inter-Korean projects such as the railway inspection that took place at the end of last year.

North and South Korea have expressed interest in moving forward on inter-Korean projects. Kim Jong Un expressed a specific desire in his New Year Address to reopen the Kaesong Industrial Complex and to resume tourism at Mount Kumgang, highlighting both projects as a form of relief North Korea might be receptive to in any deal. There have also been suggestions that one possible deal involves allowing one or both projects to resume in exchange for the dismantlement of the Yongbyon nuclear complex. While the Trump administration may be reluctant to provide exemptions for major inter-Korean projects, they may be a means to provide sanctions relief if done in the proper sequence.

The UN Temporary Waiver Option

If the permanent removal of one or more UN sanctions would be unwise, a better way to handle sanctions relief at the UN would be to provide renewable waivers. Under this approach the UN Security Council would agree to waive sanctions for a limited period of time and make the waiver renewal contingent on continued progress on dismantling North Korea's sanctioned weapons programs. This would be different from a 1718 Committee exemption in that rather than exempting a discreet activity such as last year's family reunions, this would provide a waiver for a specific UN sanction.

An initial step could be to allow exports of banned products, raise the current caps on prohibited exports, or a combination of both. In the case of allowing prohibited exports, the UN could allow the export of a product such as seafood, which served as

solid earner of hard currency for North Korea before such exports were banned. Any waiver could be time limited and potentially include a cap as well.

In the case of raising an existing cap, the UN could raise the amount of refined petroleum that North Korea is allowed to import. As U.S. and UN documented smuggling shows, North Korea's interest in adding to its supplies of petroleum remains. In 2018, North Korea may have used ship-to-ship transfers to smuggle in between 800,000 to 1.4 million barrels of oil. The United States could push for the cap to be restructured from its current limit of 500,000 barrels per year to increase by a quarter for 2019, with renewal for 2020 contingent on progress toward dismantlement. Prior to caps being placed on North Korea's refined petroleum it imported 2.2 million barrels in 2016. The United States could hold out the prospect of additional increases in 2019 if progress moved quicker than expected.

Balancing and Ordering the Trade-Offs With North Korea

Of the potential paths to sanctions relief, which might make the most sense?

A few principals should probably govern the decisions on sanctions relief, even if at times flexibility is needed. Relief should be temporary, but renewable, rather than permanent, to encourage continued progress. Early candidates for sanctions relief should touch on as few sanctions areas as possible. For example, allowing trade in one banned items touches on fewer sanctions than say, reopening Mount Kumgang, which, depending on repairs, power, and payment to name a few areas, would touch on more sanctioned areas. This way there can be less confusion about what is allowed for whom, helping to minimize the weakening of sanctions.

Start by waiving prohibited imports rather than North Korean exports. Providing waivers for increased imports before increased exports has the advantage of providing some relief for North Korea's domestic economy, while continuing to limit the regime's ability to earn hard currency.

Save the big items until last. At some point there will need to be some understanding of what steps by North Korea are worth what types of relief. The big ticket items, such as coal exports, should wait until North Korea's nuclear weapons have been dismantled.

Lastly, reinforce good behavior rather than allow the bad practices of the past to persist. If the goal is to also build a new relationship with North Korea and integrate it into the global economy, Pyongyang will need to improve some practices. For example, waiving the prohibition on overseas laborers should probably be one of the last sanctions waived, as it is one of North Korea's major foreign currency earners, but North Korea should also take steps to improve the conditions of its workers overseas. Similarly, when Kaesong reopens North Korea should begin to meet its obligations to pay workers directly and allow internet and cell phone access. South Korea should also push for the Kaesong complex to be integrated more deeply in the North Korean economy rather than the isolated enclave that it was previously.

The Debate Between Bilateral, Exemptions, and Temporary Waivers

Bilateral U.S. sanctions relief would likely hold few benefits for North Korea in the early stages of dismantlement. As a result of North Korea being subject to the Trading with the Enemy Act until 2008 and other sanctions, the United States and North Korea were not previously significant trading partners. Loosening trade restrictions at this point would be unlikely to lead to much additional trade. Even if trade restrictions were removed, as a non-market economy North Korea would face the highest U.S. tariff levels on its exports.

Removing prohibitions on supporting assistance at international development banks would be of little help for North Korea in the near term as it will take years for it to meet the requirements necessary to be eligible for assistance from IFIs such as the World Bank or the Asian Development Bank.

The bilateral approach is also complicated by the issues involved. Since U.S. sanctions on North Korea also pertain to human rights and cybersecurity, there may be less flexibility to waive them than there may seem at first. For example, U.S. sanctions prohibit the import of goods made in North Korean labor camps. Without North Korea taking steps to improve human rights and allow more transparency it may be difficult to prove that a good was not made with forced labor.

While the removal of North Korea's designation as a primary money laundering concern would benefit North Korea by returning access to the U.S. dollar system, to truly be effective, even for inter-Korean projects, it would need to be coupled with exemptions at the UN security council on financial sanctions and would likely face strong push back in Congress – which could choose to roll back any sanctions waivers if it felt the administration had not secured enough in return on dismantlement, cybersecurity, or human rights. Congress has already demonstrate a willingness to push back on the Trump administration in foreign policy.

The bilateral sanction that may make the most sense to waive at some point in the process is the prohibition on new U.S. investment by private individuals. North Korea will need outside investment to get its economy growing before it is eligible for assistance from any of the IFIs. Private investment could help prepare it to rebuild its infrastructure and begin to grow exports.

In time, if there is real progress with North Korea, sanctions requiring the United States to block efforts by international development banks to provide funding to North Korea or that prohibit it from buying land for an embassy may need to be waived, but those sanctions would be waived or removed by Congress toward the end of a process rather than at early stages.

On the surface, exemptions might make the most sense but could raise complex questions. Many of the firms in the Kaesong Industrial Complex produced textiles. Prior to the ban on textile exports, Chinese firms had also begun using North Korea for the production of textiles. If Kaesong were given an exemption, would China push for textiles more broadly to receive a waiver in general at the UN for its producers to benefit from any loosening of sanctions? China bears the most significant economic burden from sanctions and at some point will want to renew its economic ties with North Korea as well.

To discourage efforts by Chinese firms to break sanctions, the United States might be better off providing a waiver for textiles if it agrees to allow Kaesong to move forward, unless South and North Korea were willing to accept a partial opening of Kaesong.

If the United States provides a waiver for inter-Korean projects, it might be best to allow Mount Kumgang to move forward first. Tourism is not banned under UN sanctions and Chinese firms are already engaged in tourism in North Korea. It would be the simplest inter-Korean project to reopen and if dismantlement stalled would be easier to pause than Kaesong until North Korea resumed fulfilling its obligations.

For these reasons, the best course would most likely be to provide a time limited waiver on specific UN sanctions that could be renewed upon the process moving forward. This provides an incentive for North Korea to move forward on its obligations, but allows the United States to re-impose sanctions if North Korea doesn't follow through on dismantlement. It also removes the tensions that could arise in the U.S.-Korea alliance if early in the process North Korea were to renege on its commitments and Kaesong or Mount Kumgang would need to be closed.

Others Need to Be On Board

For any step toward sanctions relief to work, however, two things will be necessary. First, the administration will need assurances from China and Russia that they buy into the process of temporary sanctions relief and that should North Korea backslide they will return to full enforcement, not partial enforcement. This may be difficult in light of the administration's current trade standoff with Beijing and less than ideal relations with Moscow. Ideally, other countries would also continue to enforce sanctions as required, but Moscow and Beijing's cooperation is key.

Second, if North Korea does backslide and sanctions need to be re-imposed the administration will need to be diligent in using secondary sanctions on entities that fail to curtail their business with North Korea to send a signal to others that sanctions will be diligently enforced and to North Korea that a strategy of trying to loosen sanctions though half measures will not be successful.

Why Enforcement Matters

As U.S. Trade Representative Robert Lighthizer noted in talks with China on trade, "An agreement is nothing without enforcement."

Even after dismantlement there will be concerns that North Korea has not disclosed all of its programs and dismantled all of its weapons. During the Agreed Framework the difficulty was not that North Korea was failing to live up to the agreement, as much as that it used what the agreement didn't specify to pursue its highly enriched uranium program. Any final deal will need a provision that makes clear that a violation of the spirit of dismantlement, as well as the letter of the agreement, will result in all of the sanctions snapping back.

As Trump and Kim meet in Hanoi, both will begin to face difficult decisions on whether and how to move the process of dismantling North Korea's nuclear weapons and missile programs forward. Sanctions relief will likely be part of that discussion. Having the right plan for providing sanctions relief will be the key to ensuring that either the process is successful or that North Korea doesn't find it can keep its nuclear weapons and grow its economy.

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